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Permanent Forum on Indigenous Issues
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Future work of the Permanent Forum, including issues of the Economic and Social Council and emerging issues

Study on indigenous peoples and corporations

Note by the secretariat

Summary

During its seventh session, the United Nations Permanent Forum on Indigenous Issues appointed three of its members as Special Rapporteurs to conduct a study on indigenous peoples and corporations to examine existing mechanisms and policies relating to corporations and indigenous peoples, and review good practices. The mandate of the Special Rapporteurs was extended during the eighth session, and the Permanent Forum asked them to submit a written report to it at its ninth session, in 2010. The secretariat hereby transmits a note by the Special Rapporteurs appointed to conduct a study on indigenous peoples and corporations.

* E/C.19/2010/1.

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1. Although there have been substantial developments in the promotion and protection of the human rights of indigenous peoples in recent years, indigenous peoples around the world continue to suffer violations of their human rights and fundamental freedoms on a regular basis. This is especially the case in the context of extractive industries, such as those involving mineral, oil or gas extraction, which disproportionately impact indigenous peoples. Corporations involved in extractive industries are today often involved in abuses of the rights of indigenous peoples to their lands, territories and resources, their civil and political rights and their right to development. Such violations occur in all regions of the world and, more often than not, are permitted and tolerated by States.

2. In addressing the United Nations Permanent Forum on Indigenous Issues, indigenous peoples have consistently stressed the crucial need to address human rights issues related to extractive industries. In response, during its seventh session, the Permanent Forum appointed three of its members, Elisa Canqui Mollo, Carlos Mamani Condori and Pavel Sulyandziga, as Special Rapporteurs to conduct a study on indigenous peoples and corporations. The study is to examine existing mechanisms and policies relating to corporations and indigenous peoples, and will review good practices. The mandate of the Special Rapporteurs was extended during the eighth session, and the Permanent Forum asked them to submit a written report to it at its ninth session, in 2010.

3. The Special Rapporteurs have agreed upon an outline for the study and have each provided separate papers as conference room papers. For the eighth session of the Forum, Ms. Canqui Mollo submitted a paper on the impact of corporations on the lives and territories of indigenous peoples,[1] and Mr. Mamani Condori submitted a paper on indigenous peoples and companies: colonial rights and relations.[2] For the ninth session, Mr. Sulyandziga submitted a paper on indigenous peoples and industrial companies: problems, opportunities and prospects.[3]

4. In addition to appointing its Special Rapporteurs, the Permanent Forum, during its seventh session, adopted a recommendation concerning the holding of an expert workshop on extractive industries. The international expert group workshop was organized by Tebtebba Foundation, in cooperation with the secretariat of the Permanent Forum, and was held from 27 to 29 March 2009 in Manila. The report of the workshop[4] was submitted as a conference room paper to the eighth session of the Permanent Forum.

5. The Permanent Forum also convened an international workshop on Perspectives of relationships between indigenous peoples and industrial companies in Salekhard, Russian Federation, in 2007. The workshop was co-organized by the Administration of the Yamal-Nenets Autonomous Okrug, the Association of Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation and the secretariat of the Permanent Forum, with support from the Public Chamber of the Russian Federation (see E/C.19/2008/5/Add.6).

6. Given the complexity and magnitude of the study, the Special Rapporteurs have agreed to submit their individual contributions to the Permanent Forum

[1] E/C.19/2009/CRP.11 (Spanish only), available at www.un.org/esa/socdev/unpfii/documents.
[2] E/C.19/2009/CRP.14 (Spanish only), ibid.
[3] E/C.19/2010/CRP.1 (Russian only), ibid.
[4] E/C.19/2009/CRP.8, ibid.

together with a draft outline of the study (see annex I). The Special Rapporteurs have also submitted a select bibliography of key United Nations documents related to the private sector and the rights of indigenous peoples (see annex II). Finally, the Special Rapporteurs recommend that the Permanent Forum consider appointing a Special Rapporteur at its tenth session, in 2011, to continue the mandate of this study.

Annex I

Draft outline of the study on indigenous peoples and corporations

I. Introduction

A. Indigenous peoples' relationships with the land (environment, water, forests, mountains);

B. Overview of the relationship between corporations, States and indigenous peoples. General impacts of the activities of corporations on indigenous peoples.

II. Private-sector industries operating in indigenous lands and territories; descriptions/examples of specific conflicts in each of these areas:

A. Extractive industries (mining, oil, logging, etc.);

B. Agriculture/ethanol industries;

C. Pharmaceutical and cosmetic industries;

D. Hydroelectric and other mega-projects.

III. International law and the policies of international institutions

A. International law, including the United Nations Declaration on the Rights of Indigenous Peoples, and the duty to consult and free, prior and informed consent:

Relevant decisions of United Nations treaty bodies, the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights and other international bodies. Relevant work of the Special Rapporteur, including his report on mega-projects and on his visit to Panama;

B. International institutions

Policies of the international financial institutions (World Bank, Inter-American Development Bank, Asian Development Bank and others).

IV. Domestic law — examples of legislation implementing relevant international law.

V. Indigenous peoples' approaches, organization and strategies

In spite of developments in international law, there has been little change in the behaviour of States and corporations with respect to their operations within indigenous territories. How are indigenous peoples organizing around this issue, and what strategies are being used?

VI. Promising practices (An analysis of documented cases will be presented. Those cases should provide guidelines for policymaking and programme and project planning and execution. The purpose of this section will be to present and promote creative, successful and sustainable solutions to indigenous peoples' relationships with corporations.)

A. Ideally, two cases per region;

B. To be included in the report, the case should have involved a consultation process; included practices on the environment and social compensation; and had beneficial results for indigenous peoples.

VII. Conclusions and recommendations.

Annex II

Select bibliography of key United Nations documents related to the private sector and the rights of indigenous peoples

1. United Nations Permanent Forum on Indigenous Issues

Key reports*

- "Indigenous peoples and industrial companies: problems, opportunities and prospects" (E/C.19/2010/CRP.1), available in Russian only
- "The impact of corporations on the lives and territories of indigenous peoples" (E/C.19/2009/CRP.11), available in Spanish only
- "Indigenous peoples and private companies: colonial rights and relations" (E/C.19/2009/CRP.14), available in Spanish only
- Report of the international expert group meeting on extractive industries, indigenous peoples' rights and corporate social responsibility (E/C.19/2009/CRP.8), available in English only
- Information received from Governments: Russian Federation: report on the international workshop on perspectives of relationships between indigenous peoples and industrial companies, held in Salekhard, Yamal-Nenets Autonomous Okrug, Russian Federation (E/C.19/2008/5/Add.6)

2. Office of the United Nations High Commissioner for Human Rights

(a) Key reports

- Report of the Office of the United Nations High Commissioner for Human Rights: International Workshop on Natural Resource Companies, Indigenous Peoples and Human Rights: Setting a Framework for Consultation, Benefit-Sharing and Dispute Resolution (A/HRC/EMRIP/2009/5)
- Report of the United Nations High Commissioner for Human Rights on the outcome of the second annual sectoral consultation of senior company executives and experts (A/HRC/4/99)
- Report of the United Nations High Commissioner for Human Rights on the sectoral consultation entitled "Human rights and the extractive industry" (E/CN.4/2006/92)
- Report of the United Nations High Commissioner on Human Rights on the responsibilities of transnational corporations and related business enterprises with regard to human rights (E/CN.4/2005/91)
- Indigenous peoples' permanent sovereignty over natural resources: final report of the Special Rapporteur, Erica-Irene A. Daes (E/CN.4/Sub.2/2004/30)
- Report of the workshop on indigenous peoples, private sector natural resource, energy and mining companies and human rights, Geneva, 5-7 December 2001 (E/CN.4/Sub.2/AC.4/2002/3)

* See www.un.org/esa/socdev/unpfii for texts of documents listed.

(b) Key recommendations from treaty bodies

- General Recommendation XXIII(51) concerning indigenous peoples, Committee on the Elimination of Racial Discrimination, (CERD/C/51/Misc.13/Rev.4), 18 August 1997. Available at http://www2.ohchr.org/english/bodies/cerd/comments.htm

(c) Relevant publications

- *Embedding Human Rights in Business Practice — A joint publication of the United Nations Global Compact Office and the Office of the United Nations High Commissioner for Human Rights* (2004). The publication offers an analysis of the human rights principles from the perspective of the United Nations, business, academia and civil society. Its main focus is the practical meaning of the principles for companies; it presents four detailed case studies and a policy report on business practice in different industries; available at www2.ohchr.org/english/issues/globalization/business/list.htm
- "The Global Compact and Human Rights: Understanding Sphere of Influence and Complicity — an OHCHR Briefing Paper" (2004).The paper provides a broad overview of the current understanding of what "sphere of influence" and "complicity" mean in the context of the Global Compact's human rights principles http://www2.ohchr.org/english/issues/globalization/business/list.htm

2.1. Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

Key reports

- Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to the Human Rights Council (A/HRC/12/34). The report includes a section on the duty to consult and private-company responsibility
- "Observations on the situation of the Charco la Pava community and other communities affected by the Chan 75 hydroelectric project in Panama" (A/HRC/12/34/Add.5)
- Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2003/90). The report focuses on the impact of large-scale or major development projects on the human rights of indigenous peoples and communities

2.2. Special Representative of the Secretary-General on business and human rights

Key reports

- A bibliography of listing all documents prepared by and submitted to the Special Representative to the Secretary-General on business and human rights as of 23 November 2009 (with links) is available at www.reports-and-materials.org/Ruggie-docs-list.pdf
- Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises to the Human Rights Council (A/HRC/11/13)

3. Global Compact

Key reports

- *Embedding Human Rights in Business Practice II A joint publication of the United Nations Global Compact and the Office of the United Nations High Commissioner for Human Rights*, containing a case study about an Australian bank's work with indigenous people, available in English at www.unglobalcompact. org/newsandevents/news_archives/2008_03_27.html

4. United Nations agencies

United Nations Development Programme

- *Creating Value for All: Strategies for Doing Business with the Poor* (July 2008), available in English, French and Spanish at www.undp.org/gimlaunch/download.shtml
- *Making the Law Work for Everyone*: Volume I, report of the Commission on Legal Empowerment of the Poor (June 2008), available at www.undp.org/legalempowerment/reports/concept2action.html
- *Niger Delta Human Development Report* (July 2006), available in English at http://hdr.undp.org/en/reports/nationalreports/africa
- Beyond the Silencing of the Guns (2004) (prepared by Tebtebba Foundation with support from UNDP), available in English at www.tebtebba.org

International Labour Organization

(a) Guidelines for Combating Child Labour among Indigenous and Tribal Peoples (English, French and Spanish), available at www.ilo.org/indigenous/Resources/Guidelinesandmanuals/lang--en/docName--WCMS_091360/index.htm;

(b) Eliminating discrimination against indigenous and tribal peoples in employment and occupation: a guide to ILO Convention No. 111, available in English, French and Spanish at www.ilo.org/indigenous/Resources/Guidelinesandmanuals/lang--en/docName--WCMS_100510/index.htm.

International Fund for Agricultural Development

- Indigenous Women in Sustainable Development (2004), available in English at www.ifad.org/english/indigenous/index.htm

United Nations Centre for Transnational Corporations

- In the early 1990s, the (former) Centre on Transnational Corporations produced the following series of reports for the Working Group on Indigenous Populations: E/CN.4/Sub.2/AC/4/1990/6 (proposed methodology and draft questionnaire for distribution to indigenous peoples); E/CN.4/Sub.2/1991/49 (preliminary report); E/CN.4/Sub.2/1992/54 (report on the Americas); and E/CN.4/Sub.2/1994/40 (report on Asia and Africa)

World Health Organization

The instruments listed below are not specific to indigenous peoples. However, they are included because they are examples of a United Nations agency seeking to address the behaviour and actions of corporations:

(a) The Framework Convention on Tobacco Control (2003), available in all official languages at the United Nations at www.who.int/fctc/en/;

(b) *The International Code of Marketing of Breastmilk Substitutes*, World Health Assembly resolution 34.22 (1981), available in all official languages of the United Nations at www.who.int/child_adolescent_health/documents/9241594292/en/index.html.

United Nations Environment Programme

Industry Report Cards on Environment and Social Responsibility (2006), available in English at: http://www.unep.fr/scp/publications/details.asp?id=DTI/0827/PA

5. World Bank Group

World Bank

(a) Revised Operational Policy on Indigenous Peoples and Revised Bank Procedure on Indigenous Peoples (2005), both available at http://web.worldbank.org;

(b) "Striking a Better Balance — The World Bank Group and Extractive Industries: The final Report of the Extractive Industries Review", available in English, Spanish and Russian at http://web.worldbank.org;

(c) "Implementation of Operational Directive 4.20 on Indigenous Peoples: An Evaluation of Results" Operations Evaluation Department report No. 25754 (2003), available at web.worldbank.org.

International Finance Corporation

(a) Performance Standard 7: Indigenous Peoples (2006), available in all official languages of the United Nations at www.ifc.org/ifcext/sustainability.nsf/Content/PerformanceStandards;

(b) ILO Convention No. 169 and the private sector: questions and answers for IFC clients (2001), available at www-wds.worldbank.org.

6. Select relevant academic and non-governmental organization reports, articles and tools

- ISO 26000: the International Organization for Standardization (ISO), has decided to launch the development of an international standard providing guidelines for social responsibility. The voluntary guidance standard will be published in 2010 as ISO 26000. For more information, see http://isotc.iso.org/
- Forest Peoples Programme and Tebtebba Foundation, "Indigenous Peoples' Rights, Extractive Industries and Transnational and Other Business Enterprises" (2006), available at www.business-humanrights.org/Links/Repository/970228

- Tebtebba Foundation and Forest Peoples Programme, *Extracting Promises: Indigenous Peoples, Extractive Industries and the World Bank* (2003). Additional relevant publications can be found at www.forestpeoples.org/templates/publications_and_reports.shtml#private_sector
- International Network for Economic, Social and Cultural Rights, *Collective Report on Business and Human Rights* (2008), available at www.escr-net.org/actions_more/actions_more_show.htm?doc_id=693486
- International Network for Economic, Social and Cultural Rights, "Human Rights and Extractive Sector Case Studies-2005" (summary of cases with links on the extractive industry and human rights, submitted to the Special Representative of the Secretary-General on Human Rights and Business Expert Meeting on Human Rights and the Extractive Industry, Geneva, 10-11 November 2005): a compilation of case studies, including cases involving indigenous peoples, available at: www.escr-net.org/actions_more/actions_more_show.htm?doc_id=431017&parent_id=431015
- Human Rights Watch, *On the Margins of Profit: Rights at Risk in the Global Economy* (2008), available at www.hrw.org/doc/?t=corporations_pub
- *Oil and Gas Projects in the Western Amazon: Threats to Wilderness, Biodiversity, and Indigenous Peoples*, August 2008, available at www.amazonwatch.org/newsroom/view_news.php?id=1632
- James Anaya, "Indigenous Peoples' Participatory Rights in Relation to Decisions about Natural Resource Extraction: The More Fundamental Issue of What Rights Indigenous Peoples Have in Lands and Resources", *Arizona Journal of International and Comparative Law*, Vol. 22, No. 1 (2005), available at www.law.arizona.edu/journals/ajicl/AJICL2005/vol221/Anaya%20Formatted%20Galleyproofed.pdf
- Rights & Democracy (International Centre for Human Rights and Democratic Development), *Human rights impact assessments for foreign investment projects: learning from community experiences in the Philippines, Tibet, China, the Democratic Republic of the Congo, Argentina and Peru* (2007), available in English and Spanish at www.dd-rd.ca/site/publications/index.php?lang=en
- International Alert, *Conflict-sensitive Business Practice: Guidance for Extractive Industries* (2005) available at www.iisd.org/security/business/conflict.asp
- International Council on Human Rights Policy, *Beyond voluntarism: human rights and the developing international legal obligations of companies* (2002), available at www.ichrp.org/
- Canadian Foundation for the Americas, *Indigenous Governance Indicators for Corporate Social Responsibility: Final Report* (2008), available at focal.ca/pdf/Indigenous%20Governance%20CSR%20May%202008.pdf
- World Conservation Union-International Council on Mining and Metals, *Report of the Roundtable on Mining and Indigenous Peoples Issues* (2005), available at cmsdata.iucn.org/downloads/roundtable_20report_20eng_20final_20feb_2006.pdf

- "Small indigenous minorities of the North: lessons in self-organization and social partnership", Akcenova, O. V., Ph.D. (Sociol.), 2004, 115 pages, www.csipn.ru
- "Taking the interests of small indigenous minorities into account in decision-making regarding exploitation of minerals", Kryukov, V. A., Ph.D. (Econ.), Tokarev, A. N., Ph.D. (Econ.), 2005, 172 pages, www.csipn.ru
- "Rights of indigenous peoples of the North to land and natural resources, effective utilization and joint management", Maksimov, A. A., Ph.D. (Econ.), 2005, 84 pages, www.csipn.ru
- "Indigenous peoples of the North and industrial development. Socio-economic agreements with extraction companies: from conflict to partnership, from philanthropy to development programmes", Sulyandziga, R. V., Ph.D. (Econ.)
- Maksimov, A. A., Ph.D. (Econ.), Krupko, L. O., Borsuk, E. I., 2008, 342 pages, www.csipn.ru
- "Locations of potential conflicts between industrial companies and small indigenous minorities of the North, Siberia and the Russian Far East", Krasnopeev, S. M., Ph.D. (Med.), www.csipn.ru
- International Seminar on Natural Resource Companies, Indigenous Peoples and Human Rights, OHCHR (Geneva, Moscow), Russian Association of Indigenous Peoples of the North (RAIPON), csipn.ru
- Round table on problems of the Evenk hydroelectric station, Final Document, Assistance Centre for Small Indigenous Minority Peoples of the North, Russian Association of Indigenous Peoples of the North, Public Chamber of the Russian Federation, www.csipn.ru
- Publications
  - "Ethnological report: Russian legislation, international standards and the opportunities of small indigenous minorities of the North, Siberia and the Far East", Moscow, 2006
  - "Status of small indigenous minorities of Russia. Legislative instruments", Moscow, 2007
  - "Determination of the extent of losses by users of land and other natural resources in locations of the traditional residence and traditional economic activity of small indigenous minorities of the North, Siberia and the Far East of the Russian Federation. Methodological recommendations", Moscow, 2007
  - "Significance of traditional knowledge for sustainable development of indigenous peoples, handbook on the compilation, documentation and utilization of traditional knowledge for organizing indigenous peoples", Moscow, 2007
  - "Participation of small indigenous minorities of Russia in natural resources management: legislative basis and experience", Moscow, 2008
  - "Co-management organs in the Arctic: the examples of Canada, Alaska and the Scandinavian countries", Moscow, 2008

- "The public ethnoecological council as a model for ecological co-management in regions inhabited by small indigenous minorities of the North, Siberia and the Far East of Russia", Moscow, 2008
- "Formation of territories for traditional natural resource utilization: a practical handbook on legal issues", Moscow, 2008
- "Assessment of the quality of lands which the traditional habitat of small indigenous minorities of the North, Siberia and the Far East of the Russian Federation", Moscow, 2008

- "Batani International Development Fund for Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation: training programme on assessment of environmental impact and the prospects of indigenous peoples", Kautokeino, Norway, September-October 2006; Salekhard, Yamal-Nenets Autonomous Okrug; Second phase of the training programme, Kautokeino, Norway, January-February 2007
- 2007-2008, "Batani" Fund, "Ecological co-management of resource extracting companies, local authorities and small indigenous minorities of the North"
- 2009, Demonstration project on ecological co-management by resource extracting companies, local authorities and small indigenous minorities of the North, Moscow, 2009, www.batanifund.org
- *Library of Indigenous Peoples. List of publications of the Indigenous Peoples Training Centre*
  - 1. Economic and management foundations of the activity of organizations. A handbook for small indigenous minority peoples of the North communities
  - 2. Rights of indigenous peoples of the North to land and natural resources. Effective utilization and joint management
  - 3. Small indigenous minorities of the North: lessons of self-organization and social partnership. Role of small indigenous minority peoples of the North in forming civil society
  - 15. Indigenous peoples and industrial activity. An analysis of agreements
- "The World of Indigenous Peoples — The Living Arctic"
  - No. 17, 2004, O. Murashko, "Programme for the development of East Siberian mineral deposits and indigenous peoples"
  - No. 18, 2005, Y. Yakel, E. Khmeleva, "The right of citizens of Sakhalin to a healthy environment turns out to depend on how the Sakhalin Energy Company reads the Constitution of the Russian Federation"
  - No. 19, 2006, P. Sulyandziga, "Will the peoples of the North survive the construction of trans-continental pipelines?"
  - No. 20, 2007, editorials "Yakutia demands compliance with the law in the implementation of the East Siberia-Pacific Ocean Pipeline System Project in its territory"; "Ukok Plateau: the indigenous peoples of Altai and the backers of the Altai gas pipeline need to find a common language"

- No. 21, 2008, S. Kharyuchi, "Basic challenges facing indigenous peoples in today's Russia"; O. Timofeeva-Tereshkina, I. Kurilova, "The international conference on small indigenous minority peoples and industrial development: legal, economic and political problems and ways of solving them. The experience of Russia and the European Union", O. Murashko, "Lessons of the public ecological study in the protection of the rights of Sahelian's indigenous peoples"

- No. 22, 2009, S. N. Kharyuchi, "The role of the State in harmonizing the industrial development of the North and the sustainable development of small indigenous minorities", N. Y. Dordina, O. Murashko, "Ethno-ecological co-management must become a reality in the North of Russia"

7. Additional resources

(a) General

The Business and Human Rights Resource Centre is a clearing house updated daily with news regarding business and human rights. The website provides information on corporations and indigenous peoples, including specific cases. The site also contains a portal relating to the work of the Special Representative of the Secretary-General on business and human rights (www.business-humanrights.org/);

(b) Natural resources and conflict

The Security Council has adopted several resolutions and requested studies on the issue of natural resources and conflict. A list of key documents in this regard can be found at www.globalpolicy.org/security/natres/docsindex.htm.